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NOTIFICATION

The 24th March 2006

No. 2617–li/1(BH)-23/1999 (Pt.)-L. E.–In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 27th February 2006 in Industrial Dispute Case No. 59 of 1999 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial disputes between the Management of the Managing Director, M/s Kusalda Large Sized Multipurpose Co-op. Society Ltd., At/P. O. Kusalda, P. S. Udala, Dist. Mayurbhanj and its workman Shri Kamalakanta Mohapatra, S/o Late Krutibasa Mohapatra, At Konduakhunta, P. O. Kusalda, Dist. Mayurbhanj was referred for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE NO. 59 OF 1999

Dated the 27th February 2006

Present:

Shri P. K. Sahoo, O.S.J.S. (Jr. Branch)
Presiding Officer, Labour Court
Bhubaneswar.

Between : The Managing Director, . . . First Party—Management
M/s. Kusalda Large Sized Multipurpose
Co-op. Society Ltd., At/P. O. Kusalda
P. S. Udala, Dist. Mayurbhanj.

And

Shri Kamalakanta Mohapatra . . . Second Party—Workman
S/o Late Krutibasa Mohapatra
At Konduakhunta, P. O. Kusalda
Dist. Mayurbhanj.

Appearances :

For the First Party—Management . . . Shri M. Nayak

For the Second Party—Workman himself . . . Shri K. K. Mohapatra

AWARD

The State Government in exercise of powers conferred by sub-section (5) of Section 12, read with clause (c) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947, have referred the matter in dispute to this Court in the Labour & Employment Department Memo No. 8751(5)-L.E., dated the 2nd July 1999 for adjudication and Award.

2. The terms of reference may briefly be stated as follows :—

“Whether the action of the Management of Kusalda Large Sized Multipurpose Co-operative Societies Ltd., Kusalda, District Mayurbhanj in retrenching Shri Kamalakanta Mohapatra, Salesman with effect from the 11th July 1998 is legal and/or justified ? If not, to what relief he is entitled ?”

3. Illegal retrenchment of Shri Kamalakanta Mohapatra, Salesman with effect from the 11th July 1998 by the Management of Kusalda Large Sized Multipurpose Co-operative Societies Ltd., Kusalda, District Mayurbhanj (in short the management) is the subject matter of the dispute under challenge in the present reference.

The facts of the case in brief as narrated in the statement of claim tend to reveal that the workman had been working as Salesman under the Management with effect from the 18th December 1980 without any break till the 17th August 1998. Although the workman had rendered continuous uninterrupted service for years together with much sincerity, devotion and to the utmost satisfaction of the authorities but the Management without any rhyme or reason had illegally retrenched him from service with effect from the 11th July 1998 without following the mandate of Section 25-F of the Industrial Disputes Act, 1947 (in short the Act). All his efforts for reinstatement in service when bore no fruit, he approached the Labour machinery but to no avail. The conciliation proceeding initiated by the District Labour Officer, Mayurbhanj ended in failure and the matter was ultimately referred to this Court by the Government in the Labour & Employment Department for adjudication. While seeking industrial adjudication the workman has prayed for his reinstatement in service with back wages along with other service benefits. Hence the reference.

4. The Management, on the other hand, filed its written statement opposing the claim of the workman *inter alia* contended that due to surplus staff and heavy loss caused by the workman and as per the instruction of the higher authorities, the Board of Directors in its meeting decided to retrench the workman and in fact retrenched him from service with effect from the 17th August 1998. The Management while retrenching the workman from service had followed the mandatory provisions of Section 25-F of the Act. According to the Management, the retrenchment of the workman was legal and justified and therefore the workman is not entitled for any relief. On the above backgrounds, the rejection of the claim of the workman has been prayed for by the Management under the present reference.

5. On the basis of the above pleadings of the parties, the following issues have been framed :—

ISSUES

- (i) “Whether the action of the Management of Kusalda Large Sized Multipurpose Co-operative Societies Ltd., Kusalda, District Mayurbhanj in retrenching Shri Kamalakanta Mohapatra, Salesman with effect from the 11th July 1998 is legal and/or justified ?
- (ii) If not, to what relief he is entitled ?”

6. The workman in support of his case has examined himself as W. W. 1 and has relied upon the xerox copies of the documents such as, appointment order, dated the 18th December 1980, Order, dated the 15th January 1982, regarding regularisation of his service and one month notice for retrenchment marked as Exts. 1 to 3, respectively. On the other hand, the Management has neither examined any witness nor relied upon any document in support of its case.

FINDINGS

7. *Issue Nos. (i) and (ii)*—For better appreciation and adjudication of the dispute under reference, both the above issues are taken up together.

The perusal of the evidence of the workman clearly emerges that he joined in the establishment of the management with effect from the 18th December 1980 vide Ext. 1. He was made regular with effect from the 15th January 1982 vide Ext. 2. He continued to work under the Management till the 17th July 1998. The Board of Directors of the Management decided to retrench him from service and accordingly retrenched him with effect from the 11th July 1998 without giving any retrenchment compensation. He has categorically stated that the Management while retrenching him from service had not given any notice or notice pay and retrenchment compensation although he had rendered continuous service with effect from the 18th December 1980 till the date of retrenchment on the 11th July 1998 with much sincerity, devotion and to the utmost satisfaction of the Management. A letter regarding one month notice vide Exts. 3 was issued to him by the Management on the 13th July 1998 which he received on the 17th July 1998. It is also in his evidence that the Management without any rhyme or reason had illegally retrenched him from service without following the mandate of Section 25-F of the Act. During cross-examination he admits that he had been working under the Management with effect from the 18th December 1980 till the date of his retrenchment on the 11th July 1998. He has categorically stated that neither any charge sheet was framed nor any domestic enquiry was conducted against him for any misconduct by the Management. It has been suggested to him that he was retrenched from service for misappropriation of Society fund and negligence in duty and that he is not entitled to be reinstated in service with back wages along with other service benefits to which he has replied in the negative.

8. On careful perusal of the evidence of the workman it is seen that the Management has not elicited anything material and substantial from his mouth to discard or discredit his evidence. Rather it has been clearly established that the workman had rendered continuous service with effect from the 18th December 1980 till the date of his retrenchment

on the 11th July 1998 and that the Management while retrenching him had not given any notice or notice pay and retrenchment compensation which, in my view, was in complete violation of the mandatory provisions of Section 25-F of the Act. The perusal of the document Ext. 3 clearly reveals that the Management after careful consideration of the performance of the workman decided to retrench him with effect from the 11th July 1998 and in fact retrenched him from that date on several allegations reflected in the said document Ext. 3. He was directed in the said notice Ext. 3 to receive all his dues within one month from the date of receipt of the notice. The notice was in fact issued on the 13th July 1998 and the workman received the same on the 18th July 1998. It is clearly evident from the said document that the workman was retrenched from service with effect from the 11th July 1998 and while retrenching him from service, the Management had not followed the mandatory provisions of Section 25-F of the Act which, in my opinion, was illegal and unjustified. Apart from the above fact the allegations already alleged against the workman have not been substantiated and established by the Management. Even the stand taken by the Management as averred in the written statement has not been substantiated by the Management anywhere in the evidence. The Management has not adduced any evidence in support of its case. Besides, no reliable and cogent documentary evidence has also been furnished by the Management in support of its claim. In that view of the matter, the stand taken by the management as has been averred in the written statement is without substance. In absence of any positive and definite evidence the allegations averred in the written statements appear not to be trustworthy and credible.

9. The settled position of law is that non-compliance with the provisions of Section 25-F of the Act renders the termination of service of a workman ineffective. The Hon'ble Apex Court in catena of decisions has consistently taken the view that :

“The provisions of Section 25-F of the Act is mandatory and any violation thereof will render the retrenchment void *ab initio*.”

In the case of the Executive Engineer, Bhubaneswar Electrical Division, GRIDCO *Vrs.* Presiding Officer, Labour Court, Bhubaneswar and others reported in 2004 (103) FLR 560 of our own Hon'ble High Court, His Lordship has held that :

“The retrenchment of the workman was without following the mandatory provisions of Section 25-F of the Act. Once the retrenchment was held to be illegal and unsustainable the only order that could be passed was to set aside the order of retrenchment and direct that the workman should be reinstated in service.”

While considering a similar question regarding non-compliance of Section 25-F of the Act, the Hon'ble Apex Court in the case of *Deep Chandra Vrs. State of Uttar Pradesh* and another reported in 2001(88) FLR 508 (Supreme Court) has held that :

“The service of an employee who had put in more than 240 days in a year cannot be put to an end without following the procedure prescribed under Section 25-F of the Industrial Disputes Act.”

In the instance case the retrenchment having been made in violation of the mandatory provisions of Section 25-F of the Act is therefore, void *ab initio*. On the whole, after carefully examining the evidence led by the workman being coupled with the proved documents and keeping in view the settled position of law, I am of the considered view that the retrenchment of the workman with effect from the 11th July 1998 by the Management was illegal, unjustified and against the mandate of Section 25-F of the Act. In the meanwhile the workman has reached the age of superannuation. That apart, the Management has also not availed the services of the workman since the date of his retrenchment. In that view of the matter, a lump sum compensation to the tune of Rs. 7,000 in lieu of reinstatement and back wages in my opinion, would meet the ends of justice in the instant case. Both the above issues are answered accordingly.

10. Hence it is ordered :

ORDER

That the action of the Management of Kusalda Large Sized Multipurpose Co-operative Societies Ltd., Kusalda, District Mayurbhanj in retrenching Shri Kamalakanta Mohapatra, Salesman with effect from the 11th July 1998 is neither legal nor justified. The workman Shri Mohapatra is entitled to get a lump sum compensation of Rs. 7,000 (Rupees seven thousand) only in lieu of reinstatement and back wages.

The reference is thus answered accordingly.

Dictated and corrected by me.

P. K. SAHOO
27-2-2006
Presiding Officer
Labour Court, Bhubaneswar

P. K. SAHOO
27-2-2006
Presiding Officer
Labour Court, Bhubaneswar

By order of the Governor
N. C. RAY
Under-Secretary to Government